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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 THIRTY THREE THREADS, INC., a
11 California corporation,

12 Plaintiff,

13 v.

14 AREBESK INC., a California
15 corporation; LEANA SHAYEFAR, an
16 individual; and DOES 1-10, inclusive,

17 Defendants.
18

Case No. 2:18-cv-09765-RGK-FFM

STIPULATED PROTECTIVE ORDER

Honorable Frederick F. Mumm

19 WHEREAS, in the course of conducting discovery of each other's claims and
20 defenses, the parties anticipate they will request of each other the production of
21 discovery material which sets forth or contains trade secrets or confidential information
22 entitled to protection as defined in paragraphs 1 and 2, below, including but not limited
23 to, customer lists, sales, costs, profits, and profit margins relating to products embodied
24 by the Patent-in-Suit as well as products accused to infringe the Patent-in-Suit.

1 Accordingly, the parties seek to designate such information as “Confidential Discovery
2 Material” pursuant to this Order. It is the intent of the parties that information will not
3 be designated as confidential for tactical reasons and that nothing be so designated
4 without a good faith belief that it has been maintained in a confidential, non-public
5 manner, and there is good cause why it should not be part of the public record of this
6 case. Upon such basis, the parties further believe that “good cause” exists for the entry of
7 this Order.

8 IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff and
9 Defendants herein, and their respective undersigned counsel, as follows:

10 1. Any information produced as part of the discovery in this action that the
11 Producing Party(ies) in good faith believe contains confidential information may be
12 designated by that Party as “Confidential” or “Confidential-Attorneys’ Eyes Only”
13 (collectively, “Confidential Discovery Material”). As a general guideline, any information
14 which is publicly available or which may be readily ascertained from publicly available
15 information shall not be designated as “Confidential” or “Confidential-Attorneys’ Eyes
16 Only.”

17 Each Party or Non-Party that designates information or items for protection under
18 this Order must take care to limit any such designation to specific material that qualifies
19 under the appropriate standards. The Designating Party must designate for protection
20 only those parts of material, documents, items, or oral or written communications that
21 qualify so that other portions of the material, documents, items, or communications for
22 which protection is not warranted are not swept unjustifiably within the ambit of this
23 Order.

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1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper purpose
3 (e.g., to unnecessarily encumber the case development process or to impose unnecessary
4 expenses and burdens on other parties) may expose the Designating Party to sanctions.

5 2. Information may be designated “Confidential-Attorneys’ Eyes Only” when
6 it contains highly confidential or trade secret information, including but not limited to
7 non-public information relating to technical design and product development
8 documents and blueprints; confidential business information such as customer lists,
9 potential customers and marketing surveys, marketing plans or strategies; or non-public
10 financial information or projections, including without limitation, sales, profits,
11 liabilities, and asset information.

12 3. Confidential Discovery Material shall be used solely for the prosecution or
13 defense of this action, during both the pendency of and subsequent to the termination of
14 this action. Confidential Discovery Material shall not be used for any other purpose.
15 Control and distribution of all discovery material shall be the responsibility of attorneys
16 of record herein and shall be solely in accordance with the provisions of this Order. **Any**
17 **use of Confidential Discovery Material at trial shall be governed by the**
18 **orders of the trial judge. This Order does not govern the use of Confidential**
19 **Discovery Material at trial.**

20 4. Subject to Paragraph 16, Designation of information as “Confidential
21 Discovery Material” pursuant to this Order shall be made at the time the information is
22 produced or filed, by identifying the document as “CONFIDENTIAL” or
23 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY.”

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1 5. (a) A Party may designate as Confidential Discovery Material any
2 deposition testimony in these proceedings or any portion thereof by (i) notifying counsel
3 for the parties in writing of those pages or portion of pages of the transcript which are to
4 be stamped and treated as Confidential Discovery Material, such notice to be given no
5 later than thirty (30) days after actual receipt of the transcript of the deposition by such
6 notifying Party's counsel; or (ii) designating the material as Confidential Discovery
7 Material on the record. Prior to the expiration of such thirty (30) day period (or until a
8 designation is made by counsel, if such a designation is made in a shorter period of time),
9 the entire deposition shall be treated as if it were CONFIDENTIAL-ATTORNEYS' EYES
10 ONLY material.

11 (b) The terms of this Order are applicable to information produced by a
12 Non-Party in this action and designated as "CONFIDENTIAL" or "CONFIDENTIAL –
13 ATTORNEYS' EYES ONLY." Such information produced by non-parties in connection
14 with this litigation is protected by the remedies and relief provided by this Order.
15 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
16 additional protections.

17 6. Except as otherwise provided herein, Confidential Discovery Material
18 designated as "CONFIDENTIAL" may be inspected, examined or read by, and disclosed,
19 described or summarized, on a need-to-know basis, to:

20 (a) the Receiving Party's outside counsel of record in this litigation,
21 their partners, associates, paralegals and other law office employees;

22 (b) officers, directors, in-house counsel, and employees of parties;

23 (c) Experts and their employees as defined in this Order;

24 (d) the court and its personnel;

1 (e) court reporters and their staff, professional jury or trial consultants,
2 and professional vendors to whom disclosure is reasonably necessary for this litigation;

3 (f) the author or recipient of the designated document; and

4 (g) the jury (if applicable) may also inspect, examine, or review
5 “CONFIDENTIAL” discovery material, as needed.

6 7. Except as otherwise provided herein, Confidential Discovery Material
7 designated as “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” may be inspected,
8 examined or read by, and disclosed, described or summarized to, only the following
9 persons:

10 (a) the Receiving Party’s outside counsel of record in this litigation,
11 their partners, associates, paralegals and other law office employees;

12 (b) Experts and their employees as defined in this Order;

13 (c) the court and its personnel;

14 (d) court reporters and their staff, professional jury or trial consultants,
15 and professional vendors to whom disclosure is reasonably necessary for this litigation;

16 (f) the author or recipient of the designated document; and

17 (g) the jury (if applicable) may also inspect, examine, or review
18 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” discovery material, as needed.

19 8. As used herein, “Expert” means: a person with specialized knowledge or
20 experience in a matter pertinent to the litigation who (1) has been retained by a Party or
21 its counsel to serve as a testifying expert witness or as a non-testifying advisor in this
22 action, (2) is not a past or current employee, consultant or representative of a Party or
23 of a Party ’s competitor or is not otherwise contracted by or for a Party or a Party ’s
24 competitor, and (3) at the time of retention, is not anticipated to become an employee,

consultant, or representative of a Party or of a Party's competitor or to be contracted by or for a Party or a Party's competitor.

9. (a) A Party may not disclose Confidential or Highly Confidential information to an expert or consultant pursuant to paragraph 6(c) or 7(b) of this order until after the expert or consultant has signed an undertaking in the form of Exhibit A to this Order. The Party obtaining the undertaking must serve it on all other parties within ten days after its execution. At least ten days before the first disclosure of Confidential or Highly Confidential information to an expert or consultant (or member of their staff), the Party proposing to make the disclosure must serve the producer with a written identification of the expert or consultant and a copy of his or her curriculum vitae. If the producer has good cause to object to the disclosure (which does not include challenging the qualifications of the expert or consultant), it must serve the Party proposing to make the disclosure with a written objection within ten days after service of the identification. Unless the parties resolve the dispute within ten days after service of the objection, the producer must move the Court promptly for a ruling following the dispute resolution process under Local Rule 37.1 et seq., and the Confidential or Highly Confidential information may not be disclosed to the expert or consultant without the Court's approval.

(b) In the event a Party wishes to make disclosure of Confidential Discovery Material to persons other than those referred to in paragraphs 6 or 7 above, the parties shall negotiate in good faith to try to reach agreement, and if they cannot, then such Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

10. In the event that any Party seeks to use information or documents subject to the confidentiality restrictions of this Stipulated Protective Order in motions,

1 affidavits, briefs, or other documents filed with the Court, or seeks to offer such
2 information or documents in any hearing before the Court, such Party shall submit a
3 written application and a proposed order to the judge to whom such papers are directed
4 along with the document(s) submitted for filing under seal requesting that such
5 materials be filed under seal in the manner prescribed by Central District Local Rule 79-
6 5.1 and judge's orders, if applicable. Written information or documents containing
7 Confidential Materials submitted for filing under seal by the Court shall be marked with
8 the appropriate confidentiality level. Further, in any hearing before the Court, and
9 subject to the discretion of the Court, the courtroom shall be cleared, except for those
10 persons permitted access to the Confidential Discovery Material pursuant to this
11 agreement.

12 12. Nothing contained in this Order shall affect the right, if any, of any Party
13 or Non-Party to make any other type of objection, claim, or other response to
14 interrogatories, to requests for production of documents or subpoenas, or to any
15 questions at a deposition. Nor shall this Order be construed as a waiver by any Party or
16 Non-Party of any legally cognizable privilege or objection to withhold any document or
17 information, or of any right which any Party or Non-Party may have to assert such
18 privilege or objection at any stage of the proceedings.

19 13. Within ninety (90) days after the final adjudication or settlement of all
20 claims in this action, counsel for the parties either shall return all Confidential Discovery
21 Material produced, or shall destroy all such materials. Whether the Protected Material
22 is returned or destroyed, the Receiving Party must submit a written certification to the
23 Producing Party (and, if not the same person or entity, to the Designating Party) by the
24 90 day deadline that (1) identifies (by category, where appropriate) all the Protected

1 Material that was returned or destroyed and (2) affirms that the Receiving Party has not
2 retained any copies, abstracts, compilations, summaries or any other format reproducing
3 or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
4 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
5 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
6 expert reports, attorney work product, and consultant and expert work product, even if
7 such materials contain Protected Material. For all Confidential Discovery Material
8 retained by counsel, the terms of this Stipulated Protective Order shall be considered
9 continuing in nature.

10 14. Nothing herein shall be deemed to restrict the disclosure by any Party of
11 its own documents or materials to its own employees and agents whether or not marked
12 confidential.

13 15. Nothing herein shall affect the right of any Party to seek additional
14 protection from the Court against the disclosure of any documents or materials or to seek
15 any amendment of the terms hereof or to strike the "CONFIDENTIAL" or
16 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" designation of any materials produced
17 herein.

18 16. Any Party may apply to this Court at any time, upon proper notice, for a
19 modification of this Protective Order with respect to the handling or designation of any
20 document(s) or for any other purpose.

21 17. When a Producing Party gives notice to Receiving Parties that certain
22 inadvertently produced material is subject to a claim of privilege or other protection, the
23 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
24 26(b)(5)(B). This provision is not intended to modify whatever procedure may be

1 established in an e-discovery order that provides for production without prior privilege
2 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach
3 an agreement on the effect of disclosure of a communication or information covered by
4 the attorney-client privilege or work product protection, the parties may incorporate
5 their agreement in the stipulated protective order submitted to the court.

6 18. If timely corrected, an inadvertent failure to designate qualified
7 information or items does not, standing alone, waive the Designating Party's right to
8 secure protection under this Order for such material. Upon timely correction of a
9 designation, the Receiving Party must make reasonable efforts to assure that the material
10 is treated in accordance with the provisions of this Order.

11 19. If a Party challenges a producer's designation of information as
12 CONFIDENTIAL or CONFIDENTIAL - ATTORNEYS' EYES ONLY, the challenging
13 Party shall initiate the dispute resolution process under Local Rule 37.1 et seq. The
14 burden of persuasion in any such challenge proceeding shall be on the Designating Party.
15 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
16 unnecessary expenses and burdens on other parties) may expose the Challenging Party
17 to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality
18 designation, all parties shall continue to afford the material in question the level of
19 protection to which it is entitled under the Designating Party's designation until the
20 Court rules on the challenge. Any Party or Non-Party may challenge a designation of
21 confidentiality at any time that is consistent with the Court's Scheduling Order.

22 20. Applications to the Court to enforce this agreement, modify this agreement
23 or in any way related to this agreement may be made to any federal court with concurrent
24 subject matter jurisdiction over the claims raised in this action, including specifically:

1 the federal court which orders this agreement; any federal court to which this case may
2 be transferred; and any federal court issuing a subpoena or otherwise having concurrent
3 subject matter jurisdiction over discovery proceedings.

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5 **IT IS SO ORDERED.**

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7 DATED: June 25, 2019

8 /S/ FREDERICK F. MUMM
9 FREDERICK F. MUMM
10 UNITED STATES MAGISTRATE JUDGE
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15 AREBESK INC., a California
16 corporation; LEANA SHAYEFAR, an
individual; and DOES 1-10, inclusive,

17 Defendants.
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Case No. 2:18-cv-09765-RGK-FFM

19 **EXHIBIT A**
20

21 1. I, _____, have read and understand the Stipulation for Order
22 Governing the Designation and Handling of Confidential Materials and Order (the
23 “Order”) in this action, dated _____, and agree to be bound by
24 its terms.

2. As set forth in the Order, I shall use Confidential Material, and the information in that Confidential Material, solely for the purpose of this litigation, and for no other purpose and in no other case. I shall not disclose Confidential Material or the information in that Confidential Material except as permitted in the Order.

3. I hereby submit myself to the jurisdiction of the United States District Court for the Central District of California for the enforcement of these agreements and the Order.

I declare under penalty of perjury that the foregoing is true and correct.

Date: _____

Signature

Printed Name

Title or Position